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Supreme Court, U.S.
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No. 93-1980

In The

Supreme Court of the United States

October Term, 1994

JAMES H. STANTON, WINNIFRED STANTON, and their marital community, and ALBANY INSURANCE COMPANY, et al.,

Petitioners,

v.

BAYLINER MARINE CORPORATION,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Washington

BRIEF IN OPPOSITION OF BAYLINER MARINE CORPORATION

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QUESTIONS PRESENTED FOR REVIEW

Respondent Bayliner submits that the real issues for review are as follows:

1. Is there a conflict between two or more United States Courts of Appeals or any state courts of last resort with respect to Petitioners' principal issue of whether *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986) applies to a recreational vessel?

2. Whether this Court should defer to the Washington State Supreme Court's decision that the federal interest in having a uniform maritime law of products liability with respect to the *East River* rule, outweighs any interest the State of Washington may have in applying a conflicting state rule?

3. Is review premature where Petitioners still have a remedy available to them against another party?

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I. INTRODUCTION

Petitioners' first question is whether *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986) should apply to recreational vessels. Since *East River* was decided in 1986, only one appellate court (the subject Washington Supreme Court decision) and four reported trial court decisions have directly addressed this issue. Of these cases all but one have decided that *East River* does apply to recreational vessels. Because there is only *one* appellate decision addressing the issue, there is no conflict for this Court to resolve.

In *East River* this Court in effect makes a fundamental policy statement about risk of loss for maritime negligence or products liability actions: absent a contractual modification, the risk of pure economic loss is on the buyer, who is then expected to obtain appropriate insurance protection. In the two subject cases the vessel buyers, with or without explicit bargaining over risk of loss, did procure insurance protection, thereby effectuating the *East River* policy. Thus the anomaly, that the claims at issue here are *subrogation* claims in which the subrogee, Albany Insurance, contends that this court should disregard its presence, ignore the fact that it received a premium for the risk it undertook, repudiate the policy underlying *East River*, and fashion a unique rule of law for the State of Washington, when the Washington Supreme Court has declined to do so. The sole reason given is that both vessels were engaged in recreational uses at the time of their casualties.

Petitioners' second question, whether the Washington Supreme Court erred in ruling that state law is preempted regardless of the balance of state and federal interests, is not before the Court because the Washington Supreme Court did balance state and federal interests and concluded that the federal interest in the uniformity of federal maritime law dominates. This Court should defer to the Washington Supreme Court's assessment that the Washington state interests are not paramount when balanced against federal maritime interests.

Finally, the Petition should be denied because review is premature. Petitioners still have the potential of a full remedy on their warranty claims against the dealer, Olympic Boat Sales, Inc.

II. COUNTER-STATEMENT OF THE CASE

This matter arises out of an affirmance by the Washington Supreme Court of a trial court order granting partial summary judgment in two consolidated suits brought by Albany Insurance on its subrogated interests for monies paid for the constructive total losses of two nearly identical 45-foot yachts, manufactured by Bayliner Marine Corporation (Bayliner).

One of the vessels had been purchased by the Stanton Investment Company, ostensibly for the business purposes of charter service and entertaining clients, and for recreational use by the Stantons. The other vessel was purchased by a private party.

The subject vessels were each involved in groundings at cruising speed (12-15 knots) on well-marked and charted shoals and rocks. One of the groundings occurred in Canadian waters. No one was injured in either incident.

In each case the force of driving the vessel onto rocks tore away or ground-off parts of the skeg keel.[1] Petitioners contend that the keel should have been capped, apparently believing the keel could then be torn away without disturbing the integrity of the hull.

Bayliner's expert witness, a yacht designer, averred that (1) the hull and keel design met industry standards, (2) the design is consistent with the configuration illustrated in the American Bureau of Shipping Classification criteria, (3) the design specifications meet or exceed ABS strength criteria, (4) the configuration serves a useful purpose in providing for drainage and collection of condensate, spills, and unwanted liquids inside the hull, and (5) the design does not present a danger to reasonable and foreseeable use.

Both casualties occurred relatively close to shore and in both cases the passengers were evacuated before the vessels became submerged. According to Coast Guard records, it took the Stanton vessel 27 minutes to partially sink, with the Stantons having been transferred within 12 minutes of the initial report of grounding. The other vessel never did sink because it was firmly grounded on

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[1] The skeg keel is an integrally-molded portion of the vessel's one-piece fiberglass hull extending a maximum depth of 14 inches below the bottom of the hull; it is approximately 7 inches wide. The interior space formed by the skeg keel serves as a sump for the bilge pumps.

a rock ledge. Though the owners and their passengers were evacuated by helicopter, they could have safely waited until the completion of the ebbing tide and then walked to shore.

Albany brought suit on its subrogation interests as the insurer for the two vessels. The suits alleged negligence, products liability, and breach of warranty against Bayliner and the dealer, Olympic Boat Sales, Inc. (Olympic Boat), for allegedly manufacturing and selling vessels that could not survive being run hard aground without incurring serious flooding as a result of damage to the keel.

III. REASONS FOR DENYING THE WRIT

A. There Is No Conflict Between Any Federal or State Appellate Courts on Petitioners' Principal Issue of Whether *East River* Applies To Non-Commercial Vessels.

This case is neither of national importance nor is it ripe for review by this Court. The court below is the only appellate court to decide whether *East River* should apply to non-commercial vessels.

As a practical matter the issue of whether to apply *East River* to a recreational vessel most often, if not always, arises in the context of a subrogation claim by the insurance carrier of an expensive yacht. The economics of damages to smaller vessels such as ski or "bass" boats will not support such litigation because of the relatively small monetary amounts involved. Not unsurprisingly, the specific issue presented to the Court for review has

been reported in court proceedings on only five occasions and has not been presented to any federal court of appeals nor has it come before any state court of last resort with the exception of the Washington State Supreme Court.

With one exception, the courts that have specifically addressed the issue of whether *East River* applies to recreational vessels have uniformly held that the reasoning underlying the *East River* decision applies equally to commercial and consumer situations and have applied the *East River* holding to recreational vessels. *Karshan v. Mattituck Inlet Marina and Shipyard, Inc.*, 785 F. Supp. 363 (E.D.N.Y. 1992); *Sisson v. Hatteras Yachts, Inc.*, 1991 W.L. 47543 (N.D. Ill. 1991), 778 F. Supp. 959 (N.D. Ill. 1991); *Lewinter v. Genmar Industries, Inc.*, 1993 AMC 939 (Cal. Super. Ct. 1993); *see also, Betancourt v. W. D. Schock Corp.*, 907 F.2d 1251, 1255 (1st Cir. 1990) (applied *East River* to sailboat re: statute of limitations); *Simone v. Genmar Industries*, 1989 AMC 2627 (S.D.N.Y. 1989) (in *dicta* stated that *East River* applied to a recreational vessel); *contra, Sherman v. Johnson & Towers Baltimore Inc.*, 760 F. Supp. 499 (D. Md. 1990). In addition to these maritime cases, the Washington Supreme Court also cited three land-based cases that held that *East River* applies to consumer products. *Danforth v. Acorn Structures, Inc.*, 608 A.2d 1194, 1200 (Del. 1992); *Waggoner v. Town and County Mobile Homes, Inc.*, 808 P.2d 649 (Okla. 1990); *Dairyland Ins. Co. v. General Motors Corp.*, 549 So.2d 44 (Ala. 1989); *accord, Casa Clara Condominium Ass'n, Inc. v. Charley Toppino & Sons, Inc.*, 620 So.2d 1244 (Fla. 1993) (decided after the Washington Supreme Court opinion).

Petitioners inaccurately contend that there are four cases which have held that *East River* should not apply to

non-commercial vessels. Only in *Sherman, supra,* was the court specifically asked to apply *East River* to a non-commercial vessel. The other three opinions cited by Petitioners deal with plaintiffs engaged in commerce and discuss *East River*'s application to non-commercial products only in *dicta*.[2] Only *Employers Ins.* involves maritime facts. Of the cases cited by Petitioners, only *Sherman* is on point and adopts their theory that *East River* should apply exclusively to commercial vessels.

The only appellate court which has directly addressed the specific issue of whether to apply *East River* to a recreational vessel is the Washington Supreme Court. The only conflicting opinion on point is the district court opinion in *Sherman, supra.* The only contrary appellate decision is *Employers Ins., supra,* which is inconsistent only in *dicta.* To justify the grant of certiorari there should be a real conflict on the same matter of law or fact, "not merely an inconsistency in *dicta* or in the general principles utilized." R. Stern, E. Gressman, S. Shapiro and K. Geller, *Supreme Court Practice* § 4.3, p. 167 (7th ed. 1993). Because there is no conflict amongst the appellate courts, certiorari should not be granted.

B. The Court Need Not Reach Petitioners' Second Issue of Whether the State and Federal Interests Should be Balanced in Resolving Conflicts Between State and Maritime Law.

Petitioners at page 32 state their second issue: "The Washington Supreme Court erred in ruling that state law

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[2] *Employers Ins. of Wausau v. Suwannee River Spa Lines, Inc.,* 866 F.2d 752 (5th Cir. 1989); *Richard O'Brien Companies v. Challenge-Cook Bros., Inc.,* 672 F. Supp. 466 (D. Colo. 1987); *Consumers Power Co. v. Mississippi Valley Struc. Steel Corp.,* 636 F. Supp. 1100 (E.D. Mich. 1986).

is preempted without the need to balance state and federal interests."

This issue need not be reached because the Washington Supreme Court did specifically balance the respective federal and state interests, stating:

> . . . assuming arguendo that there was *no* conflict of laws, the determination of whether the *Graybar* rule disrupts federal maritime harmony depends on the balance of federal and state interest involved. (Citations omitted) Washington's interest in providing a remedy for these plaintiffs does not outweigh federal interests in maritime uniformity. A-59, A-60.

The Washington Supreme Court detailed the basis of its reasoning. The court engaged in statutory interpretation of the Washington Product Liability Act (RCW 7.72), observing that it was the intention of the Washington State legislature to provide a remedy for personal injuries and to protect businesses located in the State of Washington "from the substantially increasing product liability insurance costs and unwarranted exposure to product liability litigation." A-61-A-63. The court recognized that there was a state interest in protecting a manufacturer and a lessened state interest to protect the consumer from purely property loss. The court also acknowledged that it had recognized the *East River* decision as being the admiralty rule in *Washington Water Power Co. v. Graybar*, 112 Wn.2d 847, 774 P.2d 1199 (1989), and that neither legislative action nor its prior decisions would support a finding that Washington's interest in deterring the manufacture and dissemination of dangerous products

outweighs the need for a uniform maritime law of products liability. *Id.*

The Washington Supreme Court also examined the extent of the federal interests in a uniform maritime rule. In doing so, the court appropriately reviewed *Sisson v. Ruby*, 497 U.S. 358 (1989) and *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982) in which this Court found maritime jurisdiction in actions involving recreational vessels in order to further the uniformity of rules of maritime liability as between commercial and non-commercial vessels. A-63. The Washington Supreme Court quoted *Sisson v. Ruby* as stating "the need for uniform rules of maritime conduct and liability is not limited to navigation, but extends at least to any other activities traditionally undertaken by vessels, commercial or non-commercial." *Sisson v. Ruby, supra*, 497 U.S. at 367. A-63. The court also cited *Anderson v. Whittaker Corp.*, 692 F. Supp. 764, 767 (W.D. Mich. 1988), *aff'd in part, rev'd in part on other grounds*, 894 F.2d 804 (6th Cir. 1990) for the policy consideration that "there is a strong federal interest in providing uniform standards for the design and manufacture of products that have the potential to affect traditional maritime activities." A-67. After carefully reviewing this Court's and lower federal court opinions addressing the need for uniformity of maritime law, the Washington Supreme Court concluded that federal interests in having a uniform economic loss rule for maritime products liability outweighed any relevant state interests. A-63-A-67.

The Washington Supreme Court did engage in the "interest analysis" that Petitioners have asked for and concluded, based on its interpretation of the Washington Product Liability Act, prior federal and Washington state court opinions and public policy considerations, that Washington's interests do not predominate over the federal maritime interests involved. Because the Washington Supreme Court did balance state and federal interests, this Court need not reach the issue of if and when "interest analysis" is indicated and should defer to the Washington Supreme Court's own assessment of its state's interests, particularly where the Washington court concluded that the federal interests predominate.

C. The Issues Are Not Sufficiently Important to Warrant this Court's Attention.

The issue of whether or not *East River* should apply to recreational vessels has arisen in only five reported decisions, despite the fact that there are over 16 million recreational vessels in the United States.[3] Because most recreational vessels are insured or do not have sufficient value to warrant litigation, typically the few cases that actually come before the courts involve large expensive yachts. *See, e.g., Karshan, supra* ($480,000, 50-foot Chris-Craft which sustained $90,000 in damage); *Lewinter v. Genmar Industries, supra* (61-foot motor yacht); *Simone v.*

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[3] M. Harrington, *Almost Full Circle: Admiralty Jurisdiction Over Pleasure Craft, Journal of Maritime Law & Commerce*, Vol. 24, No. 3 (July 1993) 453, 498 n.259, referencing Statistical Abstract of the United States, Nos. 395, 397 and 989 (1992).

Genmar Industries, supra ("large motor yacht"); *Sherman v. Johnson, supra* ("yacht").

With respect to recreational vessels being covered by insurance, *Karshan* observed:

> . . . in a maritime context, vessel owners can, and generally do, insure against losses to the value of the vessel, *see* [*East River*, 476 U.S.] at 871, 106 S. Ct. at 2302, and . . . "(s)ociety need not presume that a customer needs special protection" *id.* at 871-872, 106 S. Ct. at 2302. Indeed, in the instant case Karshan is insured and, except as to its deductible, the real plaintiff in interest is his insurance carrier. "The increased cost to the public that would result from holding a manufacturer liable in tort for injury to the product itself is not justified." *Id.* at 872, 106 S. Ct. at 2302. *Karshan*, 785 F. Supp. at 366.

Sisson v. Hatteras, supra, involved a 56 foot Hatteras motor yacht. The suit was brought as a subrogation action by American Home Assurance Company. The court, recognizing that under *East River* there was no tort claim for economic losses to the vessel itself, stated:

> There is no reason to believe that he would not be able to pursue whatever contractual remedies he may have against the seller for economic losses due to the destruction of the ULTORIAN or that he was not otherwise protected by insurance. *Sisson v. Hatteras, supra*, 1991 W.L. 47543 at p. 2.

The two vessels which are the subject of this action were both 45 foot Bayliner yachts, each costing well over $200,000. Both vessels were insured by Albany Insurance.

Petitioners' principal issue of whether the *East River* economic loss rule applies to recreational vessels arises infrequently and usually, if not always, in the context of expensive yachts, whose owners have insurance and other remedies under breach of contract or warranty causes of action against the dealer. The few recreational vessel cases where the issue of the application of *East River* does arise, do not warrant the attention of this Court, particularly where there has not yet been a conflict between any appellate courts.

D. Review is Premature Because Petitioners Still Have a Remedy for their Warranty Claims Against the Dealer.

Petitioners' actions were brought against both Bayliner and the dealer who sold the owners their boats, Olympic Boat. The subject opinion recognizes that Petitioners can still pursue their remaining warranty claims against Olympic Boat at trial. A-28 n.1, A-29, A-67.

This Court has observed that for certiorari to be granted the underlying judgment "should be final not only as to all parties, but as to the whole subject matter and as to all causes of action involved." *Collins v. Miller*, 252 U.S. 364, 370 (1920).

The only exception that might apply is:

> . . . [w]here the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on non federal grounds, thus rendering unnecessary review of

> the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceeding still to come. In these circumstances, if a refusal immediately to review the state-court decision might seriously erode federally policy, the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of the state litigation. *Flynt v. Ohio*, 451 U.S. 619, 621, 622 (1981).

However, here, as in *Flynt*, there is "no identifiable federal policy that will suffer if the state . . . proceeding goes forward." *Flynt*, 451 U.S. at 622. Rather, the identifiable federal interest is in the uniformity of maritime law, which is served by denying certiorari.

Although the parties did stipulate to the finality of the trial court's decision for purposes of state court appellate review, the test is not whether under local rules of practice the judgment is final, rather whether the record shows that the adjudication is sufficiently final to warrant the exercise of this Court's jurisdiction. *See* R. Stern, *Supreme Court Practice*, § 3.3, pgs. 93-94.

E. Petitioners Misstate the Law When They Suggest That There is no Strong Federal Interest in the Uniformity of Maritime Products Liability Law.

Petitioners at pages 51-54 suggest that because a contract for the construction of a vessel is non-maritime

and subject to state law, there is no strong interest in the uniformity of maritime product liability law. To the contrary, *East River* observed that state law only extends to a plaintiff's breach of warranty action. *East River*, 476 U.S. at 872, 872 n.7. The decision makes it very clear that in a maritime action grounded upon negligence or products liability, federal maritime law applies. Even though a maritime plaintiff's breach of contract and warranty claims are governed by state law, concerns for uniformity and federal supremacy require that maritime tort claims for negligence and products liability be governed by federal maritime law.[4]

F. The Rationale of *East River* is not Limited to Commercial Cases.

Petitioners rely upon two principal arguments for the proposition that *East River* should be limited to vessels that are engaged in commercial service: (1) *East River's* repeated use of the word "commercial" and (2) a perceived inequality in bargaining power between recreational vessel purchasers and boat manufacturers.

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[4] *East River, supra; accord, Ingram River Equipment v. Pott Ind.*, 816 F.2d 1231 (8th Cir. 1987); *In Re Amoco Cadiz*, 699 F.2d 909, 914 (7th Cir. 1983); *Jig the Third Corp. v. Puritan Marine Ins. Underwriters Corp.*, 519 F.2d 171, 174 (5th Cir. 1975), *cert. denied*, 424 U.S. 954 (1976); *Delta Marine v. Whaley*, 813 F. Supp. 414 (E.D.N.C. 1993); *Anderson v. Whittaker*, 692 F. Supp. at 768, 768 n.2; *Complaint of American Export Lines, Inc.*, 620 F. Supp. 490, 513, 514 (S.D.N.Y. 1985); *Best v. Honeywell Inc.*, 491 F. Supp. 269, 271 (D. Conn. 1980), *aff'd*, 679 F.2d 872, 874 (2d Cir. 1981).

Though *East River* does use the term "commercial," the decision does not confine its rationale to commercial facts nor is there any persuasive argument provided that would justify limiting its application to commercial cases. Rather, as explained by the Washington Supreme Court, the *East River* policy concerns apply equally well to consumer cases. The court observed that the primary considerations in *East River* were to separate tort and contract actions, and that the vessel owner can and typically does further protect himself by insurance, both considerations apply equally to recreational vessels. A-46. The court also recognized the problems inherent in trying to make distinctions between commercial and non-commercial situations. A-49, A-51; *see Foremost*, 457 U.S. at 675-676.[5]

Before this appeal, Petitioners' counsel of record, Mr. Scowcroft, in reviewing *Sisson v. Ruby, supra*, in part explained the references in *East River* to the vessels being in "commerce" as establishing the maritime nexus necessary for federal maritime jurisdiction. J. Scowcroft, Case Notes, *Journal of Maritime Law and Commerce*, Vol. 22, No. 2 (April, 1991), 299, 305-306.

Petitioners' second contention that there may be unequal bargaining power between recreational vessel buyers and manufacturers is inapplicable to this case. Such an analysis applies only in situations where a large disparity in bargaining power creates overreaching contract provisions. *Henningsen v. Bloomfield Motors, Inc.*, 32

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[5] Petitioners' suggestion at pp. 11 and 23 that recreational vessels are analogous to automobiles, was argued by the dissent and rejected by the majority in *Foremost*. *See Foremost*, 457 U.S. at 682, 682 n.7.

N.J. 358, 161 A.2d 69 (1960). Here there are no allegations that Bayliner is seeking to enforce any unconscionable contract terms nor is there any suggestion of industry-wide overreaching in the setting of warranty provisions. On the contrary, there is a large variety of different recreational vessel manufacturers and dealers with whom a buyer can shop to obtain his best terms. Moreover, in this case, the owners each had a one year express warranty on their vessels, and each was able to secure insurance.

Petitioners at pages 11 and 27 indulge in the sweeping generality that recreational vessels owners do not have the sophistication or bargaining power to negotiate warranties or to evaluate their risks of property loss. To the contrary, yachts of a sufficient value to warrant litigation for solely property loss range in value from approximately $100,000 to millions of dollars. (*See* discussion *infra* at 9, 10).[6] In the context of these expensive yachts the owners have an equal ability to protect themselves when compared to buyers of commercial vessels, both in shopping for and negotiating warranties and in adequately insuring their vessels against property damage. Many of the larger yachts are custom built, where all of the contract provisions would be specifically negotiated.

A case of significance for the analysis in *East River, Seely v. White Motor Company*, 45 Cal.Rpt. 17, 63 Cal.2d 9, 403 P.2d 145 (1965), distinguished the concern for the potential of unequal bargaining power as can be done in this case:

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[6] Several Washington yards specialize in building expensive luxury yachts; a recently completed yacht cost over $21 million.

> Unlike the defendant in *Henningsen* (citation omitted) White is not seeking to enforce an industry-wide disclaimer of liability for personal injuries. Here, plaintiff, whose business is trucking, could have shopped around until he found the truck that would fulfill his business needs. He could be fairly charged with the risk that the product would not match his economic expectations, unless the manufacturer agreed that it would. *Seely*, 403 P.2d at 151, 152.[7]

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[7] The reasoning adopted by the *Seely* case further demonstrates the logic of not limiting *East River* to commercial situations:

> He (manufacturer) cannot be held for the level of performance of his products in the consumer's business unless he agrees that the product was designed to meet the consumer's demands. A consumer should not be charged at the will of the manufacturer with bearing the risk of physical injury when he buys a product on the market. He (consumer) can, however, be fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will. Even in actions for negligence, a manufacturer's liability is limited to damages for physical injuries, and there is no recovery for economic loss alone. *Seely*, 403 P.2d at 151, citing *Wyatt v. Cadillac Motor Car Division*, 145 Cal. App. 2d 423, 302 P.2d 665 (1956) (a consumer action involving complaints about a personal automobile).

G. A Unique Washington Maritime Rule of Economic Loss, Applicable Only to Recreational Vessels, Would Interfere With the Uniform Maritime Legal System and Unfairly Prejudice Washington Boat Manufacturers.

If this Court were to grant the relief Petitioners ask for and hold that the State of Washington should have a unique rule governing economic loss for non-commercial vessels,[8] there would be a direct affect on Bayliner in its ability to compete with out-of-state manufacturers. Bayliner and other State of Washington manufacturers could be sued in Washington state for greater products liability exposures than their competitors situated in other states or countries, thereby increasing their costs. Such a unique Washington rule would also have the effect of impermissibly encouraging forum shopping. *See, Pope & Talbot v. Hawn*, 346 U.S. 406, 411 (1953); *Butler v. American Trawler*, 707 F. Supp. 29, 31 (D. Me. 1989) *aff'd*, 887 F.2d 20 (1st Cir. 1989).

The issue of recovery for economic loss in products liability cases involving non-commercial vessels is not "peculiarly a matter of state and local concern." *Kossick v.*

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[8] The "risk of harm" test that Petitioners seek to apply is a minority view which has not been adopted in any maritime cases. *See Rocky Mountain Helicopters, Inc. v. Bell Helicopter Textron, Inc.*, ___ F.3d ___, 1994 W.L. 178134 n.2 (10th Cir. 1994); *Casa Clara*, 620 So.2d at 1245 n.2. The principal case relied upon by the Washington Supreme Court in *Graybar, supra*, in adopting the risk of harm test, *Pennsylvania Glass Sand v. Caterpillar Tractor*, 652 F.2d 1165 (3d Cir. 1981), has been overruled. *Aloe Coe v. Clark Equipment*, 816 F.2d 110 (3d Cir. 1987) *cert. denied*, 484 U.S. 853 (1987); *see Rem Cole Co. v. Clark Equipment*, 386 Pa. Super. 401, 563 A.2d 128 (1989).

United Fruit Co., 365 U.S. 731, 741 (1961). Bayliner boats and yachts are distributed throughout the world. Recreational vessels, like the two involved here, routinely travel in the Pacific Northwest between Washington, Oregon and Canada (one of the two subject vessels grounded in Canada). They also travel from other locations in the United States to Mexico, the Caribbean and Canada and state to state on the Western and Eastern seaboards, Chesapeake Bay, Gulf of Mexico, Great Lakes, and on the Mississippi River. As an example, the yacht in *Lewinter, supra,* sustained its hull failure in waters off Jamaica. Because of the high mobility of recreational vessels and their potential effect on maritime commerce, it is necessary to have uniform rules of maritime tort liability. *Sisson v. Ruby, supra; Foremost, supra.*

IV. CONCLUSION

Certiorari should be denied because (1) there is no conflict between the federal circuit courts of appeals or state courts of last resort, (2) this Court should defer to the Washington Supreme Court's subordination of its own state interests to the federal need for uniformity of maritime tort law, (3) certiorari is premature because the warranty remedies against the dealer have not yet been resolved, and (4) the Washington State Supreme Court carefully analyzed the applicable law and made the right decision.

Respectfully submitted,

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